

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE GENERAL HOSPITAL
CORPORATION and
DANA-FARBER CANCER
INSTITUTE, INC.,

Plaintiffs,

v.

ESOTERIX GENETIC
LABORATORIES, LLC and
LABORATORY CORPORATION
OF AMERICA HOLDINGS,

Defendants.

C.A. No. 1:18-cv-11360-IT

JOINT MOTION TO CONTINUE SCHEDULING CONFERENCE

The parties, the plaintiffs The General Hospital Corporation and Dana-Farber Cancer Institute, Inc. and the defendants Esoterix Genetic Laboratories, LLC and Laboratory Corporation of America Holdings, hereby jointly move to continue the Scheduling Conference set, pursuant to the Court's July 26, 2018 Notice of Scheduling Conference [Dkt. No. 29], for August 27, 2018. The parties respectfully request that the Scheduling Conference be continued, in the interest of judicial economy, to a date convenient to the Court after September 19, 2018, at which point the two pending dispositive motions (the defendants' motion to dismiss and the plaintiffs' related cross-motion for partial summary judgment) will be fully briefed and may be heard at the same time. In support of their joint motion, the parties state as follows:

1. The plaintiffs bring claims against the defendants for breach of contract, and other claims, arising from what the plaintiffs allege to be the defendants' knowing and willful breach of an Exclusive License Agreement dated May 2, 2005, and amendments thereto (the "License

Agreement”). The plaintiffs seek to recover money that they allege is due to them from the defendants under the License Agreement. In addition, the plaintiffs seek to recover, under Massachusetts General Laws Chapter 93A, for what the plaintiffs allege is the defendants’ knowing and willful breach of the License Agreement, which, as alleged by the plaintiffs, was intended to secure for the defendants un-bargained for benefits to the detriment of the plaintiffs.

2. On July 5, 2018, the defendants moved to dismiss the plaintiffs’ Complaint. [Dkt. Nos. 8-11.]

3. On July 18, 2018, the plaintiffs filed, pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), an Amended Complaint. [Dkt. No. 18] On July 19, 2018, the Court by Electronic Order denied the defendants’ motion to dismiss plaintiffs’ Complaint as moot in light of the filing of the Amended Complaint. [Dkt. No. 20.]

4. On August 1, 2018, the defendants moved to dismiss the plaintiffs’ Amended Complaint. [Dkt. Nos. 30-35.] In their motion to dismiss, the defendants contend that the plaintiffs released their claim to the money at issue in connection with the settlement of a prior litigation, and therefore cannot claim a breach of contract based on the defendants’ failure to pay that money. The defendants further contend that the plaintiffs’ remaining claims are barred for the same reason, and/or because they are duplicative of the plaintiffs’ breach of contract claim or otherwise fail to state a claim for relief. Finally, the defendants contend that the plaintiffs have not alleged any basis on which to impose liability against LabCorp, which is not a party to the License Agreement.

5. On August 15, 2018, the plaintiffs filed an opposition to the defendants’ motion to dismiss plaintiffs’ Amended Complaint and a cross-motion for partial summary judgment as to the breach of contract claim in Count I of the Amended Complaint. [Dkt. Nos. 41-44.] The

issues raised in the plaintiffs' cross-motion for partial summary judgment are closely related to those raised in the defendants' motion to dismiss.

6. The defendants' opposition to the plaintiffs' cross-motion for partial summary judgment is due on September 5, 2018. The plaintiffs' reply is due on September 19, 2018.

7. As required by the Court's Notice of Scheduling Conference [Dkt. No. 29], counsel will be prepared to argue pending motions at the Scheduling Conference.

8. As of August 27, 2018, the date currently set for the Scheduling Conference, the defendants' motion to dismiss will be fully briefed. However, the plaintiffs' cross-motion for partial summary judgment as to the breach of contract claim in Count I of the Amended Complaint will not be fully briefed until September 19, 2018.

9. As such, and since the two motions (defendants' motion to dismiss and plaintiffs' cross-motion for partial summary judgment) are related, counsel for the parties discussed the issue and agreed to jointly request that the Scheduling Conference be continued to a date convenient to the Court after both motions are fully briefed.

10. It is in the interests of justice and judicial economy that this Joint Motion be allowed.

WHEREFORE, the parties respectfully request that this Court grant their Joint Motion to Continue Scheduling Conference, and that the Scheduling Conference be rescheduled to a date and time convenient to the Court after September 19, 2018.

Respectfully submitted,

Plaintiffs,
THE GENERAL HOSPITAL
CORPORATION and
DANA-FARBER CANCER
INSTITUTE, INC.
By their attorneys,

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Dated: August 20, 2018

CERTIFICATE OF SERVICE

I, Carolyn A. Marcotte, certify that on August 20, 2018, this Joint Motion filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to the non-registered participants.

/s/ Carolyn A. Marcotte

Carolyn A. Marcotte